

CHAPTER 21: GENERAL AND FINAL PROVISIONS

(comments as of 7 March 2003)

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Subject to Legal Review for Clarity and Consistency

ARTICLE 21.1 : GENERAL EXCEPTIONS

1. For purposes of Chapters 2 through 6 (National Treatment and Market Access, Rules of Origin, Customs Procedures, Textiles, Technical Barriers to Trade), GATT 1994 Article XX and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters 8 and 9 (Cross Border Trade in Services and Telecommunications), [except to the extent that a provision of those chapters applies to investment], GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.²¹⁻¹ The Parties understand that the measures referred to in GATS Article XIV(b) include environmental measures necessary to protect human, animal or plant life or health.

ARTICLE 21.2 : ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

ARTICLE 21.3 : TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

²¹⁻¹ If GATS Article XIV is amended, this Article shall be amended, as appropriate, after consultations between the Parties.

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- (a) Article 2.1 (Market Access - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does GATT 1994 Article III; and
 - (b) Article 2.4 (Market Access - Export Taxes) shall apply to taxation measures.
4. Subject to paragraph 2:
- (a) Article 8.4 (Cross Border Trade in Services - National Treatment) and Article 10.2 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory, and
 - (b) Article 15.3 (Investment - National and Most-Favored Nation Treatment), Articles 8.4 (Cross Border Trade in Services - National Treatment) and 8.5 (Cross Border Trade in Services - Most-Favored Nation Treatment) and Articles 10.2 (Financial Services - National Treatment) and 10.3 (Financial Services - Most-Favored Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations, taxes on estates, inheritances, gifts and generation-skipping transfers,
- except that nothing in those Articles shall apply:
- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
 - (d) to a non-conforming provision of any existing taxation measure;
 - (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
 - (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
 - (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by GATS Article XIV(d)); or

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- (h) to a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, fund, or other arrangement to provide pension or similar benefits on a requirement that the Party maintain continuous jurisdiction over such trust, fund, or other arrangement.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 15.7 (Investment - Performance Requirements) shall apply to taxation measures.

6. Article 15.15 (submission of a claim to arbitration) shall apply to a taxation measure alleged to be a breach of an investment agreement or an investment authorization. Articles 15.5 (Expropriation) and 15.15 (submission of a claim to arbitration) shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 15.5 as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 15.5 with respect to a taxation measure must first refer to the competent authorities described in paragraph 7, at the time that it gives notice under Article 15.15.2, the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 15.15.4.

7. For purposes of this Article,

- (a) **competent authorities** means
 - (i) in the case of Singapore, Director (Taxation), Ministry of Finance; and
 - (ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury; and
- (b) **investment agreement** and **investment authorization** have the meanings ascribed to them in Chapter 15 of this Agreement.

ARTICLE 21.4 : DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

ARTICLE 21.5 : ANTI-CORRUPTION

1. Each Party reaffirms its firm existing commitment to the adoption, maintenance and enforcement of effective measures, including deterrent penalties, against bribery and

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corruption in international business transactions. The Parties further commit to undertake best efforts to associate themselves with appropriate international anti-corruption instruments and to encourage and support appropriate anti-corruption initiatives and activities in relevant international fora.

2. The Parties shall cooperate to strive to eliminate bribery and corruption and to promote transparency in international trade. They will look for avenues in relevant international fora to address these issues and build upon the potential anti-corruption efforts in these fora.

ARTICLE 21.6 : ACCESSION

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties and following approval in accordance with the applicable legal procedures of each country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of the accession, either does not consent to such accession.

ARTICLE 21.7 : ANNEXES

The Annexes to this Agreement constitute an integral part of this Agreement

ARTICLE 21.8 : AMENDMENTS

This Agreement may be amended by agreement in writing by the Parties and such amendment shall enter into force after the Parties have exchanged written notification certifying that they have completed necessary internal legal procedures and on such date or dates as may be agreed between them.

ARTICLE 21.9 : ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall come into force 60 days after the date when the Parties have exchanged written notification that their respective internal requirements for the entry into force of this Agreement have been fulfilled, or such other date as the Parties may agree.

2. Either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification. [Consult on appropriate transition mechanisms.]